UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CHARLES STROUCHLER, SARA CAMPOS, by her next friend ANA SIMARD, and AUDREY ROKAW, by her next friend NINA PINSKY, individually and on behalf of all others similarly situated,

Plaintiffs,

-against-

NIRAV SHAH, M.D., as Commissioner of the New York State Department of Health, and ELIZABETH BERLIN, as Executive Deputy Commissioner of the New York State Office of Temporary and Disability Assistance, and ROBERT DOAR, as Administrator of the New York City Human Resources Administration/Department of Social Services,

Defendants.

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STIPULATION AND ORDER CONCERNING TEMPORARY RELIEF

12 Civ. 3216 (SAS)

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DATE FILED: 6/12/12

WHEREAS, Plaintiffs commenced this action on April 24, 2012 alleging that Defendants violated their rights in reducing or terminating their continuous personal care services (also known as "split-shift services") provided under the Medicaid personal care and consumer directed personal assistance programs ("continuous personal care services");

WHEREAS, Plaintiffs Charles Strouchler, Sara Campos, and Audrey Rokaw have made an application to the Court seeking a temporary restraining order and a preliminary injunction enjoining Defendant Commissioner Robert Doar ("City Defendant") from reducing or terminating their continuous personal care services, or the continuous personal care services of similarly situated persons;

WHEREAS, counsel for Plaintiffs and for Defendants Commissioner Nirav Shah, Executive Deputy Commissioner Elizabeth Berlin (the "State Defendants"), and

Commissioner Robert Doar (together, the "Defendants," and, collectively with Plaintiffs, "the Parties") appeared before the Court on May 18, 2012;

WHEREAS, the Court directed the Parties to attempt to negotiate the language of a stipulation and order providing temporary relief to plaintiffs and members of the proposed class, which would remain in effect until a hearing on Plaintiffs' application for a preliminary injunction;

WHEREAS, Defendants deny any and all liability or wrongdoing arising from Plaintiffs' allegations in the Complaint or their papers in support of their application for a temporary restraining order and preliminary injunction, and nothing in this Stipulation and Order Concerning Temporary Relief ("this Stipulation and Order") shall be deemed an admission of any fault or liability by any Defendant;

WHEREAS, payments to providers of personal care services ("providers") paid for by the New York Medicaid program are made by Defendant Shah's fiscal agent after the provider makes a claim to said fiscal agent; and

WHEREAS, the Parties have agreed to resolve Plaintiffs' application for a temporary restraining order on the terms set forth below;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the Parties, through their attorneys, as follows :

1. The terms of this Stipulation and Order shall be in effect from the date that the Court so-orders it until the Court hears Plaintiffs' application for a preliminary injunction.

2. Pending the hearing on Plaintiffs' application for a preliminary injunction, the City Defendant agrees to refrain from reducing or terminating continuous personal care services to individuals who have been authorized to receive such services, except for those cases

specified in paragraph 3 below. City Defendant will provide Plaintiffs' counsel with a copy of any fair hearing decision (redacted of any identifying information other than the fair hearing number) affirming a reduction or termination of continuous care at the time the decision is received by City Defendant.

3. Notwithstanding the terms of paragraph 2 above, City Defendant shall be permitted to reduce or terminate continuous personal care services for those individuals in the following categories during the period that this Stipulation and Order is in effect:

a. Individuals authorized to receive continuous personal care services due to a temporary medical condition, medical treatment, or accident that resulted in a need for such services for a finite time period that has ended;

b. Individuals who voluntarily transfer to other long-term care programs, such as nursing homes or managed long-term care;

c. Individuals who have a change in their financial circumstances such that they are no longer eligible for Medicaid funded services;

d. Individuals who have a change in their social circumstances which changes their need for continuous personal care services; or

e. Individuals who have failed to submit the necessary documentation that would enable the City Defendant to process his or her application for reauthorization of continuous personal care services, to the extent that reducing or terminating such services for any such individual is otherwise permitted by law.

4. In any case in which Plaintiffs' counsel contends that the proposed reduction or termination to be made pursuant to paragraph 3 above is improper under current law and regulations, they will contact counsel for City Defendant to inform such counsel of their concern

regarding the propriety of City Defendant's determination and afford him a reasonable opportunity that does not pose an imminent risk to a client's health or safety to respond to and address Plaintiffs' concerns prior to seeking any necessary relief from this Court.

5. In any case in which City Defendant determines to reduce or terminate continuous personal care services, the affected individual recipient retains all legal and fair hearing rights to challenge any determination reducing or terminating such services.

6. During the time period that this Stipulation and Order is in effect, the Local Medical Directors ("LMDs") shall continue to conduct their scheduled independent assessments of each recipient's case, as required by State law, rule, and/or regulation. However, if any recipient's case does not fall within one of the categories set forth in paragraph 3 above, there shall be no reduction or termination of continuous personal care services pursuant to the LMD's assessment.

7. If as a result of the LMD assessment, City Defendant determines that continuous personal care services should be reduced or terminated, and the case does not fall within one of the categories set forth in paragraph 3 above, City Defendant will continue to provide personal care at the current level, and shall send a notice to the recipient advising the recipient (a) of City Defendant's determination and the reasons therefor; (b) that, despite the determination, no reduction or termination of services will take place at this time; and (c) that, prior to any reduction or termination of services, the recipient will receive a new notice, and will have the opportunity to request a fair hearing with aid continuing should the recipient wish to challenge the termination or reduction of services. The new notice will comply with all notice requirements of 18 N.Y.C.R.R. Part 358.

8. Any recipient whose continuous personal care services would have been reduced but for the existence of this Stipulation and Order, but whose services are maintained pursuant to the terms of this Stipulation and Order, shall receive continuous personal care services throughout the time period that this Stipulation and Order is in effect, with the exception of individuals involuntarily transferred to Medicaid Managed Long Term Care. Plaintiffs reserve the right to seek further relief from the Court against the appropriate defendants should any recipient face reduction or termination of continuous personal care services following an involuntary transfer to Medicaid Managed Long Term Care.

9. If City Defendant is permitted to reduce or terminate any such recipient's continuous personal care services following the expiration of this Stipulation and Order or any subsequent order issued in this action during a reauthorization period that begins while this Stipulation and Order is in effect, City Defendant shall serve a Notice of Intent to reduce or terminate continuous personal care services at that time (as discussed in paragraph 7(c) above), and the recipient's right to request a fair hearing and seek aid-continuing pursuant to applicable law shall accrue at that time. This provision shall survive the expiration of the term of this Stipulation and Order.

10. Nothing contained herein shall be deemed to be an admission by any of the Defendants that they have in any manner or way violated any of Plaintiffs' rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules, or regulations of the United States, the State of New York, or the City of New York, or any other rule, regulation, or by-law of any department or subdivision of the State of New York, the City of New York, the New York State Department of Health, the New York State Office of Temporary and Disability Assistance, or the New York City Human Resources Administration.

11. This Stipulation and Order is not effective unless and until it is So Ordered by the Court, and no party has any rights or obligations arising from this Stipulation unless and until this Stipulation and Order is So Ordered by the Court.

12. Within twenty days after the end of each calendar month covered by the provisions of this So Ordered Stipulation, City Defendant will forward to counsel for Defendant Shah a list of the names and client identification numbers of all persons whose personal care authorization would have been reduced from continuous personal care services to a lower level of care during the preceding calendar month but for the operation of this So Ordered Stipulation and Order.

13. Payment by Defendant Shah's fiscal agent to providers for services provided for continuous personal care to the persons identified pursuant to paragraph 12 of this Stipulation and Order will not be denied solely on the basis that continuous personal care services were provided to comply with the terms of this So Ordered Stipulation and Order. Notwithstanding the preceding sentence, Defendant Shah reserves, on behalf of his fiscal agent, the right to deny claims for payment made by providers on other grounds in the ordinary course of business, including, but not limited to, the failure of a service provider to properly complete and submit claims for payment.

14. This Stipulation and Order contains all of the terms and conditions agreed upon by the Parties, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation and Order regarding its subject matter shall be deemed to exist, or to bind the Parties, or to vary the terms and conditions contained herein.

15. This Stipulation and Order shall not be used as evidence in, nor is it related to, any other litigation or settlement negotiation, nor shall it be used as evidence, or for any other reason, in the instant litigation, except to enforce the terms hereof.

Dated: New York, New York
June 11, 2012

TOBY GOLICK, ESQ.
LESLIE SALZMAN, ESQ.

By: ______________________
Toby Golick, Esq.
Leslie Salzman, Esq.

Cardozo Bet Tzedek Legal Services
55 Fifth Avenue, 11th Floor
New York, New York 10003
(212) 790-0240

- and -

NEW YORK LEGAL ASSISTANCE GROUP

By: ______________________
Ben Taylor, Esq.
Yisroel Schulman, Esq.
Randal Jeffrey, Esq.

7 Hanover Square, 18th Floor
New York, New York 10004
(212) 613-5000

- and -

MICHAEL A. CARDOZO
CORPORATION COUNSEL OF THE CITY OF NEW YORK

By: ______________________
David A. Rosinus, Jr., Esq.
Gloria Yi, Esq.

100 Church Street, Rm. 2-165
New York, New York 10007
(212) 788-8316

Counsel for Defendant Commissioner Robert Doar

JASA/LEGAL SERVICES FOR THE ELDERLY IN QUEENS

By: ______________________
Donna Dougherty, Esq.

97-77 Queens Boulevard, Suite 600
Rego Park, New York 11374
(718) 275-5352

Counsel for Plaintiffs

ERIC T. SCHNEIDERMAN ATTORNEY GENERAL OF THE STATE OF NEW YORK

By: ______________________
Robert L. Kraft, Esq.

120 Broadway
New York, New York 10271
(212) 416-6075

Counsel for Defendants Commissioner Nirav Shah, M.D., and Executive Deputy Commissioner Elizabeth Berlin

SO ORDERED:

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SHIRA A. SCHEINDLIN
U.S.D.J.

JASA/LEGAL SERVICES FOR THE ELDERLY IN QUEENS

By:__________________________
Donna Dougherty, Esq.

97-77 Queens Boulevard, Suite 600
Rego Park, New York 11374
(718) 275-5352

Counsel for Plaintiffs

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL OF THE STATE OF NEW YORK

By:__________________________
Robert L. Kraft, Esq.

120 Broadway
New York, New York 10271
(212) 416-6075

Counsel for Defendants Commissioner Nirav Shah, M.D., and Executive Deputy Commissioner Elizabeth Berlin

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U.S.D.J.

6/12/12